

FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Sections 30-778.1 through 30-778.18

Final Modification:

Following the public hearing, after further review of the regulations, and for purposes of Section 30-778, the Department added the definition of "family member" (Section 30-778.15) to clarify its meaning and ensure consistent interpretation of the term. Sections 30-778.15 through .18 were renumbered to Sections 30-778.16 through .19 respectively to accommodate such addition.

The Department further amended renumbered Section 30-778.19 to clarify that a "disqualifying conviction" is also a "Tier 2 conviction" of a crime specified in Section 30-701(t)(2).

Section 30-778.3

Final Modification:

Following the public hearing, at the Department's discretion and after further review of the regulation, the Department revised this section to clarify that the documentation submitted by the applicant provider will be evaluated regardless of its level of completeness.

Sections 30-778.4 through 30-778.421

Final Modification:

Following the public hearing, as a result of testimony received, the Department revised this section to clarify that the submitted documentation should be evaluated regardless of its level of completeness. Section 30-778.421 was added to specify that an evaluation of the documentation submitted will be completed even if the documentation is incomplete. Section 30-778.422 (formerly Section 30-778.421) was amended to state the applicant provider's general exception case would only be closed and the applicant provider deemed ineligible to be granted a general exception if the evaluation of the applicant provider's case could not be completed as a result of the missing documentation.

Sections 30-778.52 through 30-778.529(b)

Final Modification:

Following the public hearing, as a result of testimony received, the Department is removing proposed Section 30-778.527. It has been determined that copies of the police reports involving the disqualifying crime would be provided by local law enforcement agencies and not from the applicant provider himself/herself (as set forth in proposed Section 30-778-634(a)). As a result of this amendment, proposed Sections 30-778.528 and .529 are renumbered to 30-778.527 and .528 respectively for clarity and consistency.

Sections 30-778.6 through 30-778.62

Final Modification:

Following the public hearing, the Department amended Section 30-778.62 to delete the "Provider Enrollment Appeals Unit" from the regulation as this unit's name has changed and may change again in the future. The name of the Department should be sufficient for this regulation.

Sections 30-778.63 through 30-778.639

Final Modification:

Following the public hearing, as a result of testimony received, the Department added Section 30-778.631(a)(1) to the regulations. The addition of this section is to allow consideration of an applicant provider's evidence indicating that the disqualifying crime(s) was committed while he/she was a victim of human trafficking, or as a direct result of being a victim of human trafficking. This provision creates consistency between these regulations and California Penal Code section 236.14.

Also, as a result of testimony received, the Department revised Section 30-778.631(c) to more clearly define the term "vulnerable individual."

Furthermore, as a result of testimony received, the Department revised Section 30-778.634(a) to state that any arrest or crime reports involving the applicant provider's disqualifying crime would be provided by local law enforcement agencies and not from the applicant provider himself/herself. This revision mirrors the revision/removal of Section 30-778-527 due to the reluctance of law enforcement agencies to release arrest reports that are not public records to the applicant provider. The revision of Section 30-778-634(a) also removes the provision that the applicant provider include a statement from a local law enforcement agency stating that the report is no longer available or cannot be released as such a statement is no longer needed when the applicant provider submits the general exception documentation.

Additionally, as a result of testimony received, the Department revised Section 30-778.636(c) to include a statement that clarifies that failure to prove any or all of the three character reference letters required under Section 30-778.528 would be viewed as a potential lack of rehabilitation on the applicant provider's part.

Second Final Modification:

Upon further review of the regulations, the Department further amended the following sections for clarity:

- Section 30-778.631(a) was amended to clarify that a violent crime specifies physical harm or risk of physical harm to another individual. The section also clarifies the manner in which violent crimes shall be evaluated when determining the granting of a general exception.
- Section 30-778.631(a)(1) was amended to provide consistent use of terms throughout the regulations.
- Section 30-778.631(b) was amended to clarify the manner in which crimes involving sex offenses shall be evaluated when determining the granting of a general exception.
- Section 30-778.631(c) was amended to avoid any potential confusion in regards to the population of citizens who are served by the IHSS program.
- Sections 30-778.633(a) through 30-778.633(d) were amended to remove reference to "convincing evidence of rehabilitation" as it was determined this language was too vague and therefore unclear. Also, a cross reference to Section 30-778.633(e) was added to these sections. Section 30-778.633(e) is an exception that can be applied when evaluating these sections.
- Section 30-778.633(e) was added to clarify the evaluation guidelines for determining if an applicant provider no longer poses a risk to the public and would be unlikely to engage in further criminal activities.

Sections 30-778.8 through 30-778.84

Final Modification:

Following the public hearing, as a result of testimony received, the Department revised Section 30-778.84 to change the wording of the regulation from "at least 15 calendar days" to "within 15 calendar days" to clarify the exact timeframe of when the State shall send a copy of the final administrative hearing decision to the applicant provider and to the county.

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

d) Statement of Alternatives Considered

In developing the regulatory action, CDSS did not consider any other alternatives to the proposed regulatory action because the authorizing legislation specified that CDSS implement the provisions for which the regulations are proposed through All County Letters (ACLs) or similar instruction until regulations are adopted.

The CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact On Business

The CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made because the regulations only apply to specified individuals seeking to become IHSS providers.

i) Testimony and Response

These regulations were considered at the public hearing held on December 5, 2017, in Sacramento, California. Written testimony was received during the 45-day comment period from October 20 to December 5, 2017. The comments received and the Department's responses to those comments follow.

Legal Services of Northern California (Wade Askew, Staff Attorney) submitted the following comments: (Comments 1 – 22)

General Comments:

1. Comment:

First, the rulemaking requirement in Welfare and Institutions Code § 12305.87(i) applies to the entire statute, not just general exception requirements. This regulation package should include proposed regulations regarding individual waivers, in addition to the Department's proposed regulations regarding general exception requirements.

Response:

The CDSS thanks the testifier for the comment. Regulations regarding individual waivers, which became operative on January 1, 2017, are set forth in Section 30-776.7 et seq.

2. Comment:

We appreciate CDSS drafting regulations to guide the Department in its approval of general exceptions for IHSS workers. This guidance is especially important given the vitality of employment in the successful reentry of individuals with criminal records.

However, multiple of the proposed regulations tend to restrict access to general exception procedures. This can have the effect of depriving many deserving applicants an opportunity to be heard by CDSS and/or an Administrative Law Judge in their requests for general exceptions. For example, increasing the number of days permitted to submit extensive information to the Department and relaxing required documentation would enable more applicants to have their requests properly considered.

Response:

The CDSS thanks the testifier for the comment. Although only one example is provided by the testifier to support the assertion that the proposed regulations are restrictive, the Department received multiple comments from testifiers regarding various aspects of the general exception review process. These comments are addressed in the forthcoming responses, and the Department believes that these responses will also address the commenter's general assertion that the proposed regulations are restrictive. Regarding the specific example provided, the submission deadlines and required documentation, this is also addressed in forthcoming responses.

3. Comment:

Proposed MPP § 30-778.4: Time limit to submit required documentation

CDSS proposes to allow applicants 45 calendar days to submit information required pursuant to MPP § 30-778.4. Given the extensive list of documentation required by the Department, much of which likely will not be in an applicant's direct control at the time of application, the 45-day limit will likely prevent many applicants from accessing the general exception process. We urge the Department to expand the time limit to a minimum of 90 calendar days.

In addition, the Department should allow applicants additional time to submit documents for good cause. This would make MPP § 30-778.4 consistent with other CDSS programs, which allow late submission for good cause reasons

such as illness or an inability to timely receive documents despite prompt requests for such documents.

Response:

The CDSS thanks the testifier for the comment. The Department believes that the submission timeline of 45 calendar days is sufficient for the applicant to provide the documentation requested. Some of the information requested has already been provided to the applicant during the application process. Documents requested from the court should be received well before the 45-day deadline. Official transcripts of training or other educational classes are not required. The applicant may submit written notification of his/her training, classes, and employment history. The only documentation that could be considered time-consuming for the applicant are the character reference statements and the personal statement, both of which the Department believes could be obtained or completed within the 45-calendar-day timeframe.

4. Comment:

Proposed MPP § 30-778.42: Procedures if submission is incomplete

While we applaud CDSS for proposing a regulation that allows applicants the opportunity to correct mistakes following submission, the proposed 15-day limit from the date of notice is unnecessarily brief. Our office regularly sees clients who do not effectively receive a notice until two weeks after the date of notice. In these situations, it would be virtually impossible for an individual to return required documentation within the 15-day period.

We request that the 15-day limit be amended to a minimum 30-day limit. The Department should also allow good cause for submission beyond 30 days.

Response:

The CDSS thanks the testifier for the comment. The Department believes that the timeframe of 15 calendar days for the submission of incomplete documentation is sufficient because the applicant was previously provided notice of the required documentation and would have already had 45 days to submit the required information.

5. Comment:

Proposed MPP § 30-778.52: Required documentation

The documentation listed by CDSS should be encouraged, not required. Welfare and Institutions Code Section 12305.87(e)(3) requires that CDSS consider listed criteria. However, this does not allow the Department to reject applications if highly specific types of documentation are not submitted. As long as an applicant submits some documents that involve categories listed in

Welfare and Institutions Code § 12305.87(e)(3), their application must be considered. Section 12305.87(e)(3) stands for the proposition that the Department must consider certain types of evidence if an applicant submits it, not that an applicant cannot have their application considered absent specific documents.

In addition, multiple of the documents required by CDSS are unreasonable and/or unnecessarily burdensome for applicants to create or obtain. We will comment on these specific documents below. Depriving an applicant of the right to be heard for an inability to produce these particular documents – especially if the applicant has submitted other evidence to be considered under Welfare and Institutions Code Section 12305.87(e)(3) – would violate those applicants' due process rights.

While we would applaud CDSS for explicitly encouraging applicants to gather documents that would help the Department more completely evaluate their case, conditioning evaluation on the submission of specific documents will prevent many applicants from accessing basic process.

Response:

The CDSS thanks the testifier for the comment. Welfare and Institutions Code (WIC) section 12305.87(e)(3) specifies factors that must be considered when making a determination on the granting of a general exception request. Each of the nine document types set forth in Section 30-778.521 through Section 30-778.529(b) will be necessary to evaluate the merits of the general exception request and each document relates to a factor set forth in WIC section 12305.87(e)(3) that the Department is required under that statute to consider when determining whether or not to approve a general exception request.

6. Comment:

Proposed MPP § 30-778.521: A copy of the denial notice received from the county IHSS office

This requirement is not listed in Welfare and Institutions Code § 12305.87(e)(3) and should not be required by the regulations. This requirement would unnecessarily exclude applicants from being heard in their requests for general exception, including those who may misplace or fail to receive a written notice. In addition, CDSS can obtain the notice from counties.

Submission of the denial notice should be encouraged but not required. To require the notice creates an unnecessary barrier for applicants.

Response:

The CDSS thanks the testifier for the comment. The copy of the denial notice from the county IHSS office stating the reason for the applicant provider's ineligibility is a necessary document used in the general exception evaluation process. The copy of the denial notice will inform the Department as to the legitimacy of the ineligibility determination and assist in the general exception request evaluation process by limiting the focus of the process on the specific disqualifying conviction for which the applicant was denied enrollment.

Although the testifier is correct that the applicant may misplace, lose, or fail to receive the denial notice, the applicant can easily obtain a copy of the notice from the county IHSS office either through an in-person visit or telephone call.

7. Comment:

Proposed MPP § 30-778.523: Documentation showing that current or last probation was informal

Welfare and Institutions Code § 12305.87(e)(3)(D) requires that the Department consider "The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the person." It does not require that the Department consider whether or not probation was informal. As written, the proposed regulation makes it appear that those who were ordered formal probation will be at worst excluded or at best disfavored from a general exception. Such consideration does not follow Welfare and Institutions Code § 12305.87(e)(3)(D). In addition, courts and agencies often destroy the records described in Proposed MPP § 30-778.523 after a certain period of time passes. RAP sheets do not typically display information regarding whether current or last probation was informal.

Because an applicant may be unable to submit this required documentation for reasons beyond their control, please edit this section to allow an applicant to submit documentation from a court or other agency showing that records of sentencing or probation have been purged.

Response:

The CDSS thanks the testifier for the comment. The documentation set forth in Section 30-778.523 is not a requirement. The specific language within the proposed regulation states that this documentation can be submitted "if applicable." Documentation indicating that the applicant's current or last probation period was informal would assist in determining the general level of severity of the crime for which the applicant was excluded. Such information directly relates to determining "the nature and seriousness of the conduct or crime under consideration" as required under WIC section 12305.87(e)(3)(A).

8. Comment:

Proposed MPP § 30-778.527: Copies of police reports involving the disqualifying crime(s) for which the applicant provider was convicted or a letter verifying that the report(s) no longer exist or cannot be released

Although this subsection allows for applicants to present a letter verifying that a report no longer exists or cannot be released, police reports are not required by statute, and the requirement is both unnecessary and unreasonably onerous on applicants. Such records are not public record, and many police agencies do not release them. Requiring applicants to collect all police reports is most likely a fruitless exercise that introduces an additional due process hurdle for applicants.

Response:

The CDSS thanks the testifier for the comment. The requirement for the police reports has been removed from Section 30-778.527. The Department has further amended Section 30-778.634(a) to remove reference to the submission of police reports.

9. Comment:

Proposed MPP § 30-778.528: Required three reference statements, maximum one from a family member, which must contain specific information

First, CDSS should encourage, not require, that an applicant submit a minimum of three reference statements. Welfare and Institutions Code § 12305.87(e)(3) does not demand a specific number of reference statements. An applicant who submits two strong reference statements alongside a host of other documentation should not have their request procedurally denied simply because they submit two references instead of three. Arbitrarily requiring three may deprive many applicants their right to due process.

In addition, applicants can encourage, but cannot control, a reference's adherence to the specific information required by 30-778.528. An applicant's request for general exception should be considered whether or not reference statements include all listed information; the listed information should be encouraged, not required.

Response:

The CDSS thanks the testifier for the comment. The three character reference statements, only one of which may be written by a family member of the applicant, are needed to garner a variety of responses for determination of the applicant's rehabilitation (as required under WIC section 12305.87(e)(3)(E)) and good character. The information required under 30-778.528(a) through

30-778.528(e) is the minimum information necessary to establish a direct relationship between the applicant and the individual providing the character reference statement and to establish the individual's knowledge of the applicant's rehabilitation. Without the required information, the Department would be unable to determine if the individual providing the character reference statement has any direct information or evidence of the applicant's rehabilitation, which would make the character reference statement of no value as a measure of evidence of rehabilitation under WIC section 12305.87(e)(3)(E).

10. Comment:

Proposed MPP § 30-778.529: Personal statement from applicant

CDSS proposes to require a substantial amount of required information to be included in an applicant's personal statement. While we applaud CDSS for guiding an applicant in submitting helpful information, the listed information should be encouraged, not required.

Welfare and Institutions Code § 12305.87 does not require all the information listed in MPP § 30-778.529; requiring it by regulation overreaches the Department's authority. The absence of certain information in a personal statement may represent a lost opportunity for an applicant to submit helpful evidence, but it should not prevent an applicant from accessing due process.

Many applicants cannot write because of low education, disability, or limited English proficiency. Others may be able to write a limited statement but find such an extensive personal statement extremely challenging to write. To require such an extensive written personal statement, despite no statutory requirement to do so, creates an unnecessary obstacle for applicants to request a general exception. In addition to making the information listed in 30-778.529 permissive instead of mandatory, the Department should provide alternatives to written personal statements, including phone and in-person interviews with Department staff.

Response:

The CDSS thanks the testifier for the comment. As with the character reference statements discussed in the response to Comment 9, the personal statement from the applicant must contain all of the information required under Section 30-778.529(a) through Section 30-778.529(b) as this information aids in the consideration of several factors required under WIC section 12305.87(e)(3), namely the "nature and seriousness of the conduct or crime under consideration and its relationship to employment duties and responsibilities" [WIC section 12305.87(e)(3)(A)], existence of any "evidence of rehabilitation" [WIC section 12305.87(e)(3)(E)], and the "circumstances surrounding the commission of the offense that would demonstrate the unlikelihood of repetition" [WIC section 12305.87(e)(3)(G)].

For those applicants with limited education or English proficiency, the Department will accept personal statements in their native language, consistent with Sections 21-103 and 21-115.3, which will then be translated. Additionally, in order to ensure that an applicant's limited ability to write or communicate effectively in writing does not unduly affect his/her ability to participate in the program, the Department also allows providers to submit personal statements that are dictated to another individual if they do not feel they have the proper skills to effectively communicate in written language. The individual who assists the applicant in drafting the personal statement must acknowledge as such in the document and sign the document with the applicant. If the applicant cannot sign the statement, he/she can attest to the document's authenticity with a personalized mark, as set forth in California Civil Code section 14(a), and the individual assisting with the completion of the statement can sign as a witness to the applicant's personalized mark.

11. Comment:

Proposed MPP § 30-778.63: Criteria to be considered in determining whether to grant a general exception

Welfare and Institutions Code § 12305.87(e)(3)(A) requires that the Department consider an offense's "relationship to employment duties and responsibilities." The proposed regulations do not include any language requiring the Department to tie a conviction to an applicant's actual ability to provide IHSS services. Please add a regulation clarifying this statutory obligation.

CDSS should consider, in all scenarios, the age at which an offense was committed. CDSS should also consider whether the applicant was under the influence at the time of the offense (and, if so, whether they have completed a successful treatment program that has stopped the substance abuse). CDSS currently proposes to only consider such factors when examining a "pattern of behavior" pursuant to 778.634(b). However, age and rehabilitation from substance addiction are highly relevant to the Department's evaluation of all applicants' fitness to work as IHSS providers, regardless of whether their criminal history indicates a "pattern of behavior." Both of these factors should be listed as independent subsections so that they are considered in all applications.

In addition, please add the following criteria: "If an applicant demonstrates by clear and convincing evidence that the disqualifying offense(s) was committed while they were a victim of trafficking and that the offense(s) was committed as a direct result of being a victim of human trafficking, the application for general exception shall be granted." This provision would create consistency between these regulations and Penal Code § 236.14.

Response:

The CDSS thanks the testifier for the comment. The regulations as drafted give consideration of the offense's "relationship to employment duties and responsibilities." By determining the nature of the disqualifying crime(s) and the surrounding circumstances and the characteristics of the victim or intended victim of said crime(s), the Department is establishing a direct correlation between the disqualifying crime(s) and the victim(s) and the applicant's potential duties and responsibilities as a provider of IHSS. If the nature of the disqualifying crime(s) has a direct bearing on the ability of the applicant to provide the necessary duties and responsibilities, these details will be revealed in the Department's evaluation of the nature and seriousness of the conduct. Likewise, if the victim or intended victim of the disqualifying crime(s) was an individual the applicant will likely be in close, unsupervised contact with on a daily basis (such as an elderly, disabled, or minor IHSS recipient), this information will be needed to make a determination of the appropriateness of the applicant's consideration for a general exception.

The regulations as drafted also give consideration to the "surrounding circumstances" under which the disqualifying crime(s) was committed and allows for consideration of the various factors mentioned by the testifier. Applicants also have the opportunity to highlight these factors in the personal statement they submit pursuant to Section 30-778.528.

The Department concurs with the testifier's suggestion on adding criteria related to evidence that the disqualifying crime(s) was committed while the applicant was a victim of human trafficking or was committed as a direct result of the applicant being a victim of human trafficking. The recommended criteria has been added to Section 30-778.631(a)(1).

12. Comment:

Proposed MPP § 30-778.631(a):

The legislature listed types of "Tier II crimes" that trigger a need for a general exception in Welfare and Institutions Code § 12305.87(b). Only these three types of offenses require a general exception, and there is no indication that the legislature considers certain offenses listed under Welfare and Institutions Code § 12305.87(b) as more or less serious than the others.

Included in the "Tier II" list are violent or serious felonies under Penal Code §§ 667.5 and 1192.7(c). (Welfare and Institutions Code § 12305.87(b)(I).) Proposed MPP § 30-778.631(a)'s discussion of determining whether or not a crime is violent is redundant, as Welfare and Institutions Code § 12305.87(b)(I) already defines which "violent" offenses should be considered Tier II crimes.

Proposed MPP § 30-778.631(a) should be edited to only include the second half of the subsection, which calls for consideration of the nature and severity

of violence, seriousness of harm or risk of harm, whether a weapon was used, and whether the applicant was provoked.

Response:

The CDSS thanks the testifier for the comment. The Department is tasked under WIC section 12305.87(e)(3)(A) to consider "the nature and seriousness of the conduct or crime" when determining whether to grant a general exception. Given the unique nature of the recipient population served by the IHSS program (the elderly and disabled) and the fact that providers are left with these recipients unsupervised for extended periods of time, the Department considers "the nature and seriousness" of violent offenses to be more severe than "the nature and seriousness" of non-violent offenses. Therefore, the Department believes the statute does provide for the ability to subject those applicants convicted of violent felonies to a higher level of scrutiny in order to protect the health and safety of the IHSS recipient population.

13. Comment:

Proposed MPP § 30-778.631(c):

CDSS proposes that "crime(s) shall be considered especially serious if a victim or intended victim was a vulnerable individual." The regulation does not define "vulnerable individual," which gives too much discretion. Please define "vulnerable individual."

Response:

The CDSS thanks the testifier for the comment. The Department has amended language in Section 30-778.631(c) to read: "The crime(s) shall be considered especially serious if the victim or intended victim was elderly, disabled, or a minor at the time the crime was committed." This language more clearly defines the intent of the term "vulnerable individual" while also indicating if the applicant has a history of crimes against individuals who make up the current IHSS population which would have a direct bearing on the applicant's "relationship to employment duties and responsibilities" [as set forth in WIC section 12305.87(e)(3)(A)].

14. Comment:

Proposed MPP § 30-778.633:

In certain scenarios, the regulation requires that a general exception be denied unless an applicant submits "convincing evidence of rehabilitation." However, CDSS does not define "convincing" or provide any indication of how the "convincing" standard differs from the standard used in evaluating other applications.

The Department lacks statutory authority to require varying levels of evidence of rehabilitation for differently situated individuals. Welfare and Institutions Code § 12305.87(e)(3)(E) simply requires the Department to consider "[a]ny evidence of rehabilitation."

All references to required denials absent "convincing evidence of rehabilitation" should be eliminated. Evidence of rehabilitation is simply one of several factors listed by Welfare and Institutions Code § 12305.87(e)(3) to be considered in evaluating a request for general exception.

Response:

The CDSS thanks the testifier for the comment. The phrase "convincing evidence" does not refer to an increased level of evidence of rehabilitation that would be set for differently situated individuals. The phrase refers to the presentation of evidence that reaches a level that would "convince" the analyst evaluating the general exception request from the applicant of the applicant's suitability to be granted a general exception. This may vary from individual to individual based on the circumstances surrounding the applicant's criminal conviction.

15. Comment:

Proposed MPP § 30-778.633(a), (b), (c), and (d):

These subsections require eight, six, or four years to have passed since finishing the sentence of an offense in specified circumstances. Welfare and Institutions Code § 12305.87(e)(3)(C) requires that the Department consider "[t]he number of convictions and the time that has elapsed since the conviction or convictions."

Echoing the general comment for subsections under 30-778.633, requiring heightened evidentiary standards based on the number and recency of convictions is not authorized by statute. The number and time elapsed since conviction(s) is one of several factors and should not be weighted more heavily than other criteria listed in Welfare and Institutions Code § 12305.87(e)(3).

Response:

The CDSS thanks the testifier for the comment. As discussed in the response to comment 12, the Department is tasked under WIC section 12305.87(e)(3)(A) to consider "the nature and seriousness of the conduct or crime" when determining whether to grant a general exception. The goal of the Department's IHSS program is to provide support services for elderly and disabled individuals to allow them to live within their own homes and community without a risk to their health and safety. The purpose of the heightened standards based on the type of crime, number of convictions, and

recency of convictions is not based on evidentiary standards but on the "nature and seriousness" of the conviction and is designed to ensure the goal of protecting the health and safety of the recipient population who, due to age and/or disability, are very vulnerable. The heightened standards are necessary to ensure that this vulnerable population is protected since providers are left with these recipients unsupervised for extended periods of time. The Department believes that the statute does allow for this by virtue of WIC section 12305.87(e)(3)(C) which allows for the consideration of the number of convictions and the time that has elapsed since the convictions. Likewise, the recency of the conviction has a direct correlation to "evidence of rehabilitation" which is required for the Department to consider pursuant to WIC section 12305.87(e)(3)(E). An individual only recently released from incarceration is less likely to have the necessary history of "evidence of rehabilitation," under WIC section 12305.87(e)(3)(E) than an individual who has had a longer period between the conviction date and the date of request of the general exception.

16. Comment:

Proposed MPP § 30-778.633(c):

This subsection calls for disqualification for a non-violent property crime or fraud unless an applicant presents convincing evidence of rehabilitation. Welfare and Institutions Code § 12305.87 does at any point reference non-violent property crime. In addition, it does not single out fraud for special treatment beyond listing convictions under Welfare and Institutions Code §§ 10980(c)(2) or 10980(g)(2) as offenses triggering the need for general exceptions. (Welfare and Institutions Code § 12305.87(b)(3).)

Conviction of non-violent property crime or fraud should not trigger a heightened requirement for evidence of rehabilitation. Pursuant to Welfare and Institutions Code § 12305.87(e)(3)(C), these convictions, like any other, should be considered as one element in a holistic evaluation of an applicant's request. Please eliminate 778.663(c).

Response:

The CDSS thanks the testifier for the comment. As stated in the response to Comment 15, the heightened standards related to the type of crime, number of convictions, and recency of convictions are not evidentiary in nature. The standards are based on the "nature and seriousness" of the crime which the Department is required to consider under WIC section 12305.87(e)(3)(A). The reduced standards for non-violent property crimes and fraud were determined by the Department based on the decreased likelihood that an individual convicted of such crimes would pose an imminent physical danger to a program recipient.

17. Comment:

Proposed MPP § 30-778.634:

This subsection requires the denial of an application absent convincing evidence of rehabilitation if an applicant "indicates a pattern of criminal behavior that may make him/her a risk to the safety and well-being of an IHSS recipient to whom he/she is providing care."

Please define "pattern of criminal behavior." A "pattern" should not be found unless an applicant has been convicted of three or more crimes within the previous six years.

In addition, as is further detailed under our comment concerning 30-778.633 and 30-778.633(c), please eliminate the per se heightened requirement for evidence of rehabilitation in such applications.

Response:

The CDSS thanks the testifier for the comment. The Department believes a pattern of criminal behavior can be determined based on an evaluation of the applicant's criminal history. Frequent arrests and convictions for criminal offenses of any kind could be seen as evidence of a lack of rehabilitation. Therefore, indications of a "pattern of criminal behavior" should be considered when evaluating the applicant's "evidence of rehabilitation," as required under WIC section 12305.87(e)(3)(E).

18. Comment:

Proposed MPP § 30-778.636(c):

A failure to submit one or more character reference letter may result in denial. As explained in the comment regarding 30-778.528, outright denial for failure to submit character references, per se, is unduly harsh. A failure to submit character reference letters should be seen as a missed opportunity to provide evidence that could have been helpful to an applicant, nothing more. Per se denial for failure to provide a specific type of evidence of rehabilitation creates an unnecessary hurdle for those applying for general exceptions.

Response:

The CDSS thanks the testifier for the comment. As stated, failure to submit fewer than three character references may result in denial of the general exception request; however, the regulations do not state that this failure will automatically result in the applicant's denial.

19. Comment:

Proposed MPP § 30-778.7: State's options to either grant or deny the general exception request

Please add a third option to those of granting or denying a request: granting a request with the imposition of probationary terms. Analogous licensing agencies, such as the Board of Vocational Nursing and Psychiatric Technicians (BVNPT), retain the authority to conditionally grant licensure. Given the additional discretion of offering general exceptions pursuant to probationary terms, the State could provide expanded access to work for applicants as well as expanded choice for care recipients without compromising recipient safety.

Response:

The CDSS thanks the testifier for the comment. The granting of a probationary general exception is not authorized by statute.

20. Comment:

Proposed MPP § 30-778.73: Records will be maintained until date of disqualifying convictions are no longer within the 10-year exclusionary period

Please clarify that records will be purged at the conclusion of this time period.

Response:

The CDSS thanks the testifier for the comment. WIC section 12305.87(b) states that an applicant provider that has been disqualified due to a Tier 2 criminal conviction cannot be paid to provide services to an IHSS recipient for 10 years following a conviction for, or incarceration following a conviction for, the Tier 2 crime. Therefore, records of convictions prior to 10 years from the date of the applicant's enrollment are not considered when making a determination regarding the need for a general exception and such records do not need to be maintained by the Department. The Department, however, does not feel the need to regulate the method of disposal of such records from the Department's files. The best method for purging of the records will be at the discretion of the CDSS Caregiver Background Check Bureau based on the bureau's current procedures.

The method of disposal of outdated records will be at the discretion of the CDSS Caregiver Background Check Bureau. That bureau is currently developing procedures related to this, and the Department does not feel it is necessary to dictate in regulations the exact nature of the disposal method.

21. Comment:

Proposed MPP § 30-778.82:

Please add the following provision regarding State procedures upon receiving a request for administrative hearing:

"An administrative hearing shall be held within 90 calendar days of the State's receipt of the applicant's request. Hearing procedures shall be governed by Health and Safety Code § 100171, as is required by Welfare and Institutions Code § 12305.87(g)(1)."

Many applicants depend on work as IHSS providers as their sole form of employment. Delay in rendering decisions not only causes financial hardship for applicants, but it also increases costs for the State as applicants often must rely on public benefits pending a decision.

Response:

The CDSS thanks the testifier for the comment. In Section 30-778.83, the Department appropriately references the proper section of the California Health and Safety Code which governs the rules and policies of the State Administrative Hearing Office. The Department has no regulatory jurisdiction over the timetables of the State Office of Administrative Hearings (OAS).

22. Comment:

Proposed MPP § 30-778.84:

This subsection requires that a decision be sent "*at least* 15 calendar days after the adoption date of the decision." (Emphasis added). This seems to be a typo, as it gives the State an unlimited amount of time to send a decision, as long as it is 15 days or more after a decision is rendered. Please change the language to "*within* 15 calendar days..."

In addition, please explicitly require denial notices to include language advising an applicant of their right to file a writ of administrative mandamus in Superior Court should they wish to challenge the administrative decision.

Response:

The CDSS thanks the testifier for the comment. The language in Section 30-778.84 has been amended to read "within 15 calendar days after the adoption date of the decision" to remove any ambiguity from the statement. The Department has no regulatory jurisdiction over the content of the denial notice issued by the OAS.

Justice in Aging (Claire M. Ramsey, Senior Staff Attorney) submitted the following comments: (Comments 23 – 28)

23. Comment:

The Department should give the applicant provider more time to file for a general exception request. Section 30-778.4 only allows an applicant provider 45 calendar days from the date of denial to submit the general exception request and all documentation to the state. Given the long list of required supporting documents, many of which are not held by the applicant provider, 45 days is too short. We propose the Department give applicant providers at least 90 calendar days to submit the general exception request all documentation or only require the general exception request form without the supporting documentation be filed within 45 calendar days.

The reason behind the Department's proposed time frame as described in the Initial Statement of Reasons indicates that it wants to ensure that the general exception process is not open-ended. This desire for administrative finality, however, must be balanced against the applicant provider's real hurdles in completing the general exception process. The Department's proposed time frame tips the balance too far in the Department's favor at the expense of the applicant provider and the consumer who wants to hire the applicant provider.

Response:

The CDSS thanks the testifier for the comment. The Department believes that the submission timeline of 45 calendar days is sufficient for the applicant to provide the documentation requested. Some of the information requested has already been provided to the applicant during the application process. Documents requested from the court should be received well before the 45-day deadline. Official transcripts of training or other educational classes are not required. The applicant may submit written notification of his/her training, classes, and employment history. The only documentation that could be considered time-consuming for the applicant are the character reference statements and the personal statement, both of which the Department believes could be obtained or completed within the 45-calendar-day timeframe.

24. Comment:

The Department fails to give applicant provider's sufficient time to submit additional requested documentation. Section 30-778.42 requires the Department to notify an applicant provider if supporting documentation is missing from his general exception request. The Department only allows 15 calendar days from the date of the IHSS General Exception Incomplete Request notice which does not practically allow the applicant provider to fulfill the request. We propose the Department allow an applicant provider 30 calendar days to fulfill the incomplete notice with 5 days mailing added from

the date of the notice. This change will ensure that an applicant provider has a meaningful opportunity to respond with the needed documents.

Additionally, the Department should be required to review the initial application within 10 days of submission and inform the provider about missing supporting documentation within 15 days of submission of the application. This will ensure that the Department is processing the applications in a timely manner given its stated goal of administrative finality.

Response:

The CDSS thanks the testifier for the comment. The Department believes that the timeframe of 15 calendar days for the submission of incomplete documentation is sufficient because the applicant was previously provided notice of the required documentation and would have already had 45 days to submit the required information.

25. Comment:

The Department should create a good cause exception to its submission deadlines. The Department is requiring substantial documentation from the applicant provider before it considers a general exception request complete. For many of these documents, including police reports and signed character references, the applicant is reliant on other people and entities to produce documentation within a short time frame. The Department should not punish the applicant provider, if despite their good faith efforts, he is unable to obtain all the documentation within the submission deadlines. We propose the Department create a good cause exception to the submission deadlines if the applicant provider has made a good faith attempt to procure the appropriate documentation within the established time frames, but has not been able to acquire it timely.

Response:

The CDSS thanks the testifier for the comment. The Department believes the time frames of 45 calendar days for the initial submission and 15 calendar days for the submission of incomplete documentation are sufficient for the types of documentation requested.

26. Comment:

Documentation created by the county IHSS office should be sent directly by the county, not the applicant provider. Section 30-778.521 and .522 require the applicant provider to send the Department copies of the denial notice and the IHSS Program Provider Enrollment form. We propose the Department ask the county IHSS office for copies of these forms once it has received the general exception request from the applicant provider and at the same time it asks for the CORI as specified in section 30-778.61.

Response:

The CDSS thanks the testifier for the comment. Copies of the denial notice and the IHSS Program Provider Enrollment form are provided to the applicant pursuant to Section 30-776.416 and Section 30-776.611. The Application for General Exception Request is sent to the applicant provider when the denial notice is sent; therefore, the Department believes it is highly unlikely the applicant would not have a copy of the denial notice at the time the Application for General Exception Request is prepared and submitted. If the applicant has misplaced the documents, he/she may obtain another copy from the county.

27. Comment:

The Department should be required to process a general exception application request within 60 calendar days. The Department has drafted strict time frames for the receipt of the general exception application and the supporting documentation based on its need for administrative finality in decisions. However, the Department failed to set a time frame for its determination. This omission runs counter to many of the reasons the Department provides in its Initial Statement of Reasons; specifically that it creates a burden to hold open a case and that the information provided may grow stale. We propose the Department be required to determine eligibility for a general exception request within 60 calendar days of receipt of a completed application. This requirement will further the Department's stated goals and will ensure that the provider and the consumer who wishes to employ have a determination within a reasonable time frame.

Response:

The CDSS thanks the testifier for the comment. The Department understands the need for rapid responsiveness on these matters; however, a specified time period for the processing of a general exception request cannot be set forth in the regulations as the time needed to complete the general exception request review process is based on a variety of factors beyond the State's control, including receiving documentation from various local agencies (including local law enforcement) and careful review of documentation provided by the applicant.

28. Comment:

The Department should consider whether its supporting documentation requirements overburden the provider applicant. The Department has a vested interest in ensuring that IHSS consumers are safe in their homes and in disqualifying providers who may pose a risk to those consumers. However, this must be balanced with the consumer's right to choose their own provider and with the fact that many communities of color are overrepresented in the criminal justice system. The effect of these extensive documentation

requirements will be to exclude providers who may be appropriate and safe choices for a consumer. It will also exacerbate the provider shortage which is already acute. We propose the Department re-evaluate its lengthy list of specific documentation requirements and create a more manageable set of requirements that still ensures consumer safety.

Response:

The CDSS thanks the testifier for the comment. The Department developed the list of required documentation and the evaluation process detailed in these regulations in order to provide the State with the information the Legislature required it to consider per WIC section 12305.87(e)(3) and to ensure that the risk to each IHSS recipient's health and safety is minimized. Sections 30-776.7 through 30-776.741(a)(1) provide that an IHSS recipient, having full knowledge of his/her chosen provider's criminal background, can choose to allow the applicant provider to be enrolled in the IHSS program and serve as his/her provider through the filing of an individual waiver, which upholds the recipient's right to choose his/her own provider. The granting of a general exception, however, allows for a provider to serve a recipient without the recipient receiving full knowledge of the provider's criminal background. The documentation required under these regulations allows the Department to make a fully informed decision on the recipient's behalf about the appropriateness of an applicant provider to work, unsupervised, within the IHSS recipient population, as required under the provisions of WIC section 12305.87(e).

j) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. The renotice period was from July 18 to August 2, 2018. There were no comments received as a result of the renotice and no further amendments have been made to the regulations.

k) Second 15-Day Renotice Statement

These regulations package was disapproved by the Office of Administrative Law (OAL) for clarity issues that could not be resolved without a 15-day renotice. In preparation to resubmit these regulations to OAL pursuant to Government Code section 11349.4, the Department amended the regulations specified on OAL's disapproval letter. Pursuant to Government Code Section 11346.8, a second 15-day renotice and complete text of modifications made to the regulations were made available to the public following the first 15-day renotice. The renotice period was February 8 to 25, 2019. There were no comments received as a result of the renotice and no further amendments have been made to the regulations.